

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**DAVID D. WILBON, RICO M. WILBON,
and GEORGE J. SMITH,**

Plaintiffs,

V.

**JOSEPH M. PLOVANICH, OFFICER
MILLAN (Star # 6082), KEVIN A. GRANEY,
ROBERT MANGAN, MICHAEL T.
KARCZEWSKI, SARAH McDERMOTT,
NOEL ESQUIVEL, ANTONIO J. VALENTIN,
MARK A. KUSHINER, JORGE CERDA,
ARMANDO SILVA, JR., RAFAEL S. GARCIA,
J. J. GORZKOWSKI, UNKNOWN OFFICERS
OF THE CHICAGO POLICE DEPARTMENT,
and CITY OF CHICAGO,**

Defendants.

[illegible]

Case No. 12 C 1132

Magistrate Judge M. David Weisman

**PLAINTIFFS' RENEWED MOTION TO ADMIT RULE 1006 SUMMARY OF
INFORMATION**

Plaintiffs, DAVID. D. WILBON, RICO M. WILBON, and GEORGE J. SMITH, by and through their attorneys, Irene K. Dymkar, Torrey L. Hamilton, and Shamoyita M. DasGupta, hereby move this Court to admit a Rule 1006 summary of Chicago Public School salary information available on a government website accessible to the public. In support thereof, plaintiffs state as follows:

- 1) This is a case brought pursuant to 42 U.S.C. § 1983. Plaintiff David D. Wilbon makes a claim of false arrest and malicious prosecution. He claims a lost employment opportunity as damages.

2) Mr. Wilbon was offered a Factor Custodial position with the Chicago Public Schools at Leland Elementary School in August 2010. The mandatory start date was September 1, 2010, because of the start of the school year.

3) Two counts of Aggravated Assault to a Police Officer and one count of Mob Action against David Wilbon were dismissed on September 10, 2010. As a result of the pending charges, the Chicago Public School job offer was withdrawn. A man named Noel Gonzalez was offered the Factor Custodial position and accepted; pending his availability, a substitute employee filled in.

4) Mr. Wilbon then began the application process for a much lower-paying Custodial position. By the time the paperwork was completed, the criminal charges were dismissed. He was offered the Custodial position at Leland Elementary School and accepted.

5) Mr. Gonzalez remains in the Factor Custodial position. Mr. Wilbon remains at the lower paying Custodial position. Mr. Wilbon has lost substantial wages and benefits because of defendants' actions.

6) In response to plaintiffs' subpoenas, the Chicago Board of Education has filed four declarations regarding Chicago Public School records pertaining to David Wilbon:

Two declarations by Carline Altine, Employee Records Manager, identifying and authenticating Plaintiffs' Exhibit 19 as a business record under Fed.R. Evid. 803(6) (Doc. 518-2, 518-4)

Declaration by Lauren Clair-McClellan, Director of Human Resource Operations, verifying that Position # 155314 was for the Factor Custodian position at Leland Elementary School, which "closed" (was phased out to new hires) on July 2, 2013 (Doc. 518-6).

Declaration by Theresa Tomcisin, Director of Web Services, verifying that Chicago Public Schools maintains a website accessible by members of the general public, https://cps.edu/About_CPS/Financial_information/Pages/EmployeePositionFiles.aspx, containing job position and salary information for employees from 2009 - 2018.

7) Plaintiffs have asked the Court to take judicial notice of employee position and wage information posted on the Chicago Public Schools website. Doc. 503. The Court ruled that it would take judicial notice of Mr. Wilbon and a comparator's salary information available on the website, but denied admission of the Rule 1006 summary of information. Doc. 512. Plaintiffs renew the motion for admission of the Rule 1006 summary.

8) The webpage https://cps.edu/About_CPS/Financial_information/Pages/EmployeePositionFiles.aspx, contains links to lengthy spreadsheets with employee wage information. The reports are each hundreds of pages long.

9) Plaintiffs have simplified the summary chart of the wage information originally filed as Doc. 503-3 by removing any columns containing information regarding benefits and any calculations of wage differentials. The revised chart, attached as Exhibit A, now simply contains the date of the report, the employee name, the job title, the position number, and the annual gross salary. All of this information was obtained directly from the reports available at the above link to the Chicago Public Schools website.

10) Plaintiffs have extracted the information pertaining to plaintiff David D. Wilbon and Noel Gonzalez for each report filed between November 10, 2010, and June 30, 2018, and attached those one-page extractions as Exhibits B - X for easy verification:

Exhibit B is the 11/15/2010 report extract

Exhibit C is the 8/1/2011 report extract

Exhibit D is the 7/11/2012 report extract

Exhibit E is the 10/1/2013 report extract

Exhibit F is the 12/31/2013 report extract

Exhibit G is the 3/31/2014 report extract

Exhibit H is the 6/30/2014 report extract

Exhibit I is the 9/30/2014 report extract

Exhibit J is the 12/30/2014 report extract

Exhibit K is the 3/31/2015 report extract

Exhibit L is the 6/30/2015 report extract

Exhibit M is the 9/30/2015 report extract

Exhibit N is the 12/31/2015 report extract

Exhibit O is the 3/31/2016 report extract

Exhibit P is the 6/30/2016 report extract

Exhibit Q is the 9/30/2016 report extract

Exhibit R is the 12/31/2016 report extract

Exhibit S is the 3/31/2017 report extract

Exhibit T is the 6/30/2017 report extract

Exhibit U is the 9/30/2017 report extract

Exhibit V is the 12/31/2017 report extract

Exhibit W is the 3/31/2018 report extract

Exhibit X is the 6/30/2018 report extract

11) The reports posted on the website from March 31, 2014 to June 30, 2018 were posted on the website as Microsoft Excel documents. For each of these reports, in order to easily view the pertinent information and be able to simultaneously see the relevant date to which that information

pertained, plaintiffs downloaded the Excel document, kept it in a protected view that plaintiffs could not edit, and took a screenshot of the relevant information.

12) The Court has already agreed to take judicial notice of this employee wage information posted on the Chicago Public Schools' website. Because the information in the linked reports is voluminous and "cannot be easily examined in court," plaintiffs ask, pursuant to Rule 1006, that a summary be admitted as evidence. Plaintiff has prepared a simple summary that gathers together in one chart all the information needed to compare Mr. Wilbon's and Mr. Gonzalez's salaries. Exhibit A.

13) In addition, plaintiffs request that the Court read the following instruction to the jury in the instant case:

I have decided to accept as proved the following salary information appearing on the Chicago Public Schools government website, which you must now treat as having been proved for the purpose of this case:

- On November 15, 2010, David D. Wilbon's annual gross salary was \$24,232.00, and Raymond Montanez, a substitute employee's, annual gross salary was \$58,077.30.
- On August 1, 2011, David D. Wilbon's annual gross salary was \$24,752.00, and Noel Gonzalez's annual gross salary was \$56,322.52.
- On July 11, 2012, David D. Wilbon's annual gross salary was \$26,104.00, and Noel Gonzalez's annual gross salary was \$56,322.52.
- On October 1, 2013, David D. Wilbon's annual gross salary was \$29,891.00, and Noel Gonzalez's annual gross salary was \$58,599.00.
- On December 31, 2013, David D. Wilbon's annual gross salary was \$29,120.00, and Noel Gonzalez's annual gross salary was \$58,599.00.
- On March 31, 2014, David D. Wilbon's annual gross salary was \$29,120.00, and Noel Gonzalez's annual gross salary was \$58,599.00.

- On June 30, 2014, David D. Wilbon's annual gross salary was \$29,120.00, and Noel Gonzalez's annual gross salary was \$58,599.00.
- On September 30, 2014, David D. Wilbon's annual gross salary was \$33,733.00 and Noel Gonzalez's annual gross salary was \$59,771.00.
- On December 30, 2014, David D. Wilbon's annual gross salary was \$33,733.00, and Noel Gonzalez's annual gross salary was \$59,771.00.
- On March 31, 2015, David D. Wilbon's annual gross salary was \$33,733.00, and Noel Gonzalez's annual gross salary was \$59,771.00.
- On June 30, 2015, David D. Wilbon's annual gross salary was \$33,733.00, and Noel Gonzalez's annual gross salary was \$59,771.00.
- On September 30, 2015, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$60,966.00.
- On December 31, 2015, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross income was \$60,966.00.
- On March 31, 2016, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$60,966.00.
- On June 30, 2016, David D. Wilbon's annual gross salary was \$34,840, and Noel Gonzalez's annual gross salary was \$60,966.00.
- On September 30, 2016, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$60,966.00.
- On December 31, 2016, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$60,966.00.
- On March 31, 2017, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$62,246.00.
- On June 30, 2017, David D. Wilbon's annual gross salary was \$34,840.00, and Noel Gonzalez's annual gross salary was \$62,246.00.
- On September 30, 2017, David D. Wilbon's annual gross salary was \$35,537.00, and Noel Gonzalez's annual gross salary was \$63,491.00.

- On December 31, 2017, David D. Wilbon's annual gross salary was \$35,537.00, and Noel Gonzalez's annual gross salary was \$63,491.00.
- On March 31, 2018, David D. Wilbon's annual gross salary was \$35,537.00, and Noel Gonzalez's annual gross salary was \$63,491.00.
- On June 30, 2018, David D. Wilbon's annual gross salary was \$ 35,537.00, and Noel Gonzalez's annual gross salary was \$63,491.00.

WHEREFORE plaintiffs, DAVID D. WILBON, RICO M. WILBON, and GEORGE J.

SMITH, respectfully request that this Court admit into evidence Exhibit A, a Rule 1006 summary of the information contained on the Chicago Public School website at webpage

https://cps.edu/About_CPS/Financial_information/Pages/EmployeePositionFiles.aspx, as it pertains to David Wilbon and his comparator, Noel Gonzalez.

Dated: July 22, 2018

/s/ Irene K. Dymkar
Irene K. Dymkar

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